

PROCEDURES FOR CERTAIN ENVIRONMENTAL PERMIT APPLICATIONS**CHAPTER 116**

S.B. No. 709

AN ACT**relating to procedures for certain environmental permit applications.***Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 2003.047, Government Code, is amended by adding Subsections (e-1), (e-2), (e-3), (e-4), (e-5), (i-1), (i-2), and (i-3) to read as follows:

(e-1) This subsection applies only to a matter referred under Section 5.556, Water Code. Each issue referred by the commission must have been raised by an affected person in a comment submitted by that affected person in response to a permit application in a timely manner. The list of issues submitted under Subsection (e) must:

- (1) be detailed and complete; and*
- (2) contain either:*
 - (A) only factual questions; or*
 - (B) mixed questions of fact and law.*

(e-2) For a matter referred under Section 5.556 or 5.557, Water Code, the administrative law judge must complete the proceeding and provide a proposal for decision to the commission not later than the earlier of:

- (1) the 180th day after the date of the preliminary hearing; or*
- (2) the date specified by the commission.*

(e-3) The deadline specified by Subsection (e-2) may be extended:

- (1) by agreement of the parties with the approval of the administrative law judge; or*
- (2) by the administrative law judge if the judge determines that failure to extend the deadline would unduly deprive a party of due process or another constitutional right.*

(e-4) For the purposes of Subsection (e-3)(2), a political subdivision has the same constitutional rights as an individual.

(e-5) This subsection applies only to a matter referred under Section 5.557, Water Code. The administrative law judge may not hold a preliminary hearing until after the executive director has issued a response to public comments under Section 5.555, Water Code.

(i-1) In a contested case regarding a permit application referred under Section 5.556 or 5.557, Water Code, the filing with the office of the application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:

- (1) the draft permit meets all state and federal legal and technical requirements; and*
- (2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.*

(i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:

- (1) relates to a matter referred under Section 5.557, Water Code, or an issue included in a list submitted under Subsection (e) in connection with a matter referred under Section 5.556, Water Code; and*

- (2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.*

(i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.

SECTION 2. Section 5.115, Water Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) For the purpose of an administrative hearing held by or for the commission involving a contested case, “affected person,” or “person affected,” or “person who may be affected” means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.

(a-1) The commission shall adopt rules specifying factors which must be considered in determining whether a person is an affected person in any contested case arising under the air, waste, or water programs within the commission’s jurisdiction and whether an affected association is entitled to standing in contested case hearings. *For a matter referred under Section 5.556, the commission:*

(1) *may consider:*

(A) *the merits of the underlying application, including whether the application meets the requirements for permit issuance;*

(B) *the likely impact of regulated activity on the health, safety, and use of the property of the hearing requestor;*

(C) *the administrative record, including the permit application and any supporting documentation;*

(D) *the analysis and opinions of the executive director; and*

(E) *any other expert reports, affidavits, opinions, or data submitted on or before any applicable deadline to the commission by the executive director, the applicant, or a hearing requestor; and*

(2) *may not find that:*

(A) *a group or association is an affected person unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would be an affected person in the person’s own right; or*

(B) *a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit application.*

(d) The commission shall adopt rules for the notice required by this section. *The rules must provide for the notice required by this section to be posted on the Internet by the commission.*

SECTION 3. Section 5.228(c), Water Code, is amended to read as follows:

(c) The executive director shall participate as a party in contested case permit hearings before the commission or the State Office of Administrative Hearings to:

(1) provide information to complete the administrative record; and

(2) support the executive director’s position developed in the underlying proceeding *unless the executive director has revised or reversed that position.*

SECTION 4. Subchapter M, Chapter 5, Water Code, is amended by adding Section 5.5553 to read as follows:

Sec. 5.5553. NOTICE OF DRAFT PERMIT. (a) This section applies only to a permit application that is eligible to be referred for a contested case hearing under Section 5.556 or 5.557.

(b) Notwithstanding any other law, not later than the 30th day before the date the commission issues a draft permit in connection with a permit application, the executive director shall provide written notice to the state senator and state representative of the area in which the facility that is the subject of the permit is located.

SECTION 5. (a) The changes in law made by this Act apply only to:

(1) a permit application that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act; or

(2) a judicial proceeding initiated on or after the effective date of this Act that challenges an act or decision of the Texas Commission on Environmental Quality made during a permit proceeding.

(b) A permit application filed or a judicial proceeding initiated before the effective date of this Act is governed by the law in effect when the permit application was filed or the judicial proceeding was initiated, and the former law is continued in effect for that purpose.

(c) Notwithstanding Subsection (a), the changes in law made by this Act do not apply to:

(1) a permit application:

(A) filed after the effective date of this Act; and

(B) that is substantially similar to a permit application for which a draft permit has been issued and that was:

(i) filed before the effective date of this Act; and

(ii) withdrawn at the request of the permit applicant; or

(2) a judicial proceeding:

(A) initiated after the effective date of this Act; and

(B) that is substantially similar to a judicial proceeding initiated before the effective date of this Act that has been dismissed at the request of the permit applicant.

(d) Not later than January 1, 2016, the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this Act. For an application filed after the effective date of this Act but before the adoption of rules to implement the changes in law made by this Act, the commission shall provide sufficient notice to the applicant and other participants in the permit proceeding that the changes in law made by this Act apply to the proceeding.

SECTION 6. This Act takes effect September 1, 2015.

Passed the Senate on April 16, 2015: Yeas 22, Nays 9; the Senate concurred in House amendments on May 13, 2015: Yeas 21, Nays 10; passed the House, with amendments, on May 1, 2015: Yeas 83, Nays 37, one present not voting.

Approved May 23, 2015.

Effective September 1, 2015.

ISSUANCE OF A PROTECTIVE ORDER AND THE APPOINTMENT OF A MANAGING CONSERVATOR IN CERTAIN FAMILY LAW PROCEEDINGS

CHAPTER 117

S.B. No. 817

AN ACT

relating to the issuance of a protective order and the appointment of a managing conservator in certain family law proceedings.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 71.0021(a), Family Code, is amended to read as follows:

(a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim *or applicant for a protective order*:

(A) with whom the actor has or has had a dating relationship; or